

IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c.15, Schedule B

AND IN THE MATTER OF the preparation of a handbook for
electricity distribution rate applications.

**BRANTFORD POWER INC. ("BRANTFORD POWER")
AURORA HYDRO CONNECTIONS INC. ("AURORA HYDRO")
AND SCUGOG HYDRO ENERGY CORPORATION
("SCUGOG HYDRO") RESPONDING SUBMISSIONS ON
CHAPTER 3 OF THE DRAFT 2006 EDR HANDBOOK –
TEST YEAR AND ADJUSTMENTS**

FEBRUARY 28, 2005

INTRODUCTION:

1. In their submission of February 14, 2005, Brantford Power, Aurora Hydro and Scugog Hydro made the following recommendations with respect to Tier 2 adjustments:
 - (a) LDCs should be permitted to recover all forgone incremental MARR-related revenues, and should not be limited to the recovery of revenues forgone in 2004;
 - (b) Tier 2 adjustments should not be based on a "hardship" or "system degradation" standard. Instead, the qualifying LDC should, at most, be required to show how it intends to make use of the Tier 2 adjustment funds, and that the planned activities are reasonable for the proper maintenance and operation of its distribution system. If the OEB determines that the recovery of the Tier 2 adjustment must be linked to the performance of certain activities by the qualifying LDC, then the recovery of the Tier 2 adjustment may be subject to reasonable reporting requirements in order that the OEB can be satisfied that the funds are being spent on the activities identified by the qualifying LDC; and
 - (c) Tier 2 adjustments should not be subject to any mitigation requirements in the EDR Handbook. If they are, the effect will be that the inequitable treatment

experienced by certain utilities in 2001 or 2002 (depending on the circumstances that qualify the LDC for the Tier 2 adjustment), which will have continued to 2006 and which could be fixed at that time, will be perpetuated.

2. The grounds for those recommendations are set out in their February 14th submission, and Brantford Power, Aurora Hydro and Scugog Hydro do not intend to repeat them here. At this time, Brantford Power, Aurora Hydro and Scugog Hydro wish to address the the following matters:
 - (a) The comments of certain parties with respect to the mitigation of the potential impacts of Tier 2 adjustments; and
 - (b) A concern regarding the process for this proceeding, in which parties raising proposals that do not fit neatly within the alternatives set out in the draft 2006 Electricity Distribution Rate ("EDR") Handbook have no ability to reply to criticisms of those proposals contained in responding submissions.

MITIGATION OF TIER 2 IMPACTS:

3. As is clear from their February 14, 2005 submission, Brantford Power, Aurora Hydro and Scugog Hydro have proposed an approach to Tier 2 adjustments that does not match the alternatives set out in the draft Handbook. Because the Tier 2 adjustment should not be hardship-related and should, instead, be considered the correction of the regulator's decision to establish an arbitrary floor value of 0% during the initial unbundling process, Brantford Power, Aurora Hydro and Scugog Hydro request that the OEB reject the submissions of parties such as the School Energy Coalition that would have qualifying distributors exhaust their return on equity before being eligible for what Schools refers to as a "catchup amount." The distributor's revenue requirement should provide for a return on equity in addition to the funds necessary for the distributor to operate and maintain its distribution system. As noted in its February 14th submission, other distributors were not required to show hardship before being permitted to move to their full target MBRR.

4. However, in the alternative, if the approach proposed by Brantford Power, Aurora Hydro and Scugog Hydro were to be rejected by the OEB, Brantford Power, Aurora Hydro and Scugog Hydro would support Alternative 2 for Tier 2 adjustments, so that qualifying distributors would have the opportunity to recover the entire value of the returns forgone as a result of their negative 1999 returns. As Brantford Power, Aurora Hydro and Scugog Hydro stated in their February 14th submission, in either qualifying circumstance, the LDC has lost more than one year's worth of incremental returns – there is no apparent reason to limit the LDC to the recovery of only one year's worth of incremental returns, other than arbitrariness. If the OEB is going to insist that LDCs justify their recoveries on the basis of forgone activities, then that should be the driver for the recovery. If the LDC has forgone activities with a value equal to several years' worth of incremental revenues, then that is the amount of revenue that should be recovered.
5. Alternative 2 provides that "*Any such amounts approved by the Board will be recovered with a rate rider to be in place for the period over which the corrective investments are to be undertaken.*" Brantford Power, Aurora Hydro and Scugog Hydro would agree with this approach.
6. Even if the OEB were to reject the Brantford Power/Aurora Hydro/Scugog Hydro proposal and impose Alternative 2 (or even Alternative 1), Brantford Power, Aurora Hydro and Scugog Hydro submit that the Tier 2 adjustments should not be reduced or denied by operation of bill or distribution rate impact mitigation measures. The reasons for this are set out in their February 14th submission and remain applicable in the context of the alternatives as set out in the draft Handbook. However, Brantford Power, Aurora Hydro and Scugog Hydro acknowledge that the OEB may wish to provide for mitigation of Tier 2 adjustment impacts. In that case, the OEB should consider the mitigation of Tier 2 impacts separately from the mitigation of other impacts of 2006 rates. That is, the OEB should consider whether the bill impacts of Tier 2 adjustments are in themselves inappropriate. If so, steps could be taken to mitigate the bill impacts of the Tier 2 adjustments.

7. Brantford Power, Aurora Hydro and Scugog Hydro appreciate that Schools would apparently not have the OEB deny a Tier 2 adjustment as a result of mitigation measures – instead, if distribution rates (presumably as a result of all 2006 changes) are more than 15% higher than 2005, Schools would have the OEB require the qualifying distributor to include a proposal for spreading the catchup costs over more than one year. Brantford Power, Aurora Hydro and Scugog Hydro understand this as being a similar approach to that proposed in the preceding paragraph, in that Tier 2-related adjustments will not be aggregated with other adjustments, and potentially lost.

8. However, Brantford Power, Aurora Hydro and Scugog Hydro believe that it is important that the LDC have the funds needed to perform the necessary projects at the time the projects are being undertaken. To that end, Brantford Power, Aurora Hydro and Scugog Hydro submit that an approach suggested by LPMA to the recovery of Tier 2 adjustments would be preferable, for the purpose of mitigating Tier 2 adjustment-related bill impacts. At p.6 of the LPMA submission, LPMA submits that if not all of the Tier 2 expenditures (operating and/or capital) may be required in 2006, they should not all be built into 2006 rates. Brantford Power, Aurora Hydro and Scugog Hydro do not agree with the LPMA position that LDCs should not receive their entire Tier 2 adjustments in 2006; they do not agree with LPMA's proposed adoption of Alternative 1; they do not accept that municipal shareholders will be able or permitted to infuse additional capital into LDCs; and they do not accept that LDCs will always be in a position to increase their borrowing, in light of other costly commitments such as new transformer stations that are also required to serve new loads and maintain system reliability. However, they suggest that for the purpose of mitigation, it would be preferable to mitigate bill impacts by limiting annual recoveries to the projects that will be performed in a particular year. Where projects are planned over more than a single year, bill impacts will be mitigated while distributors will have the funds needed to undertake their projects in the years that they have planned them. Brantford Power, Aurora Hydro and Scugog Hydro appreciate that the Schools proposal is somewhat open-ended, in that the distributor would simply be required to present a plan to the OEB, and the Schools submission does not prescribe the requirements of that plan. Brantford Power, Aurora Hydro and Scugog Hydro would be content with such an

open-ended requirement provided that the OEB specifically permits distributors to present a plan that proposes recoveries in the years that the activities are planned, and confirms that such a plan will be acceptable to it.

9. In the further alternative, Brantford Power, Aurora Hydro and Scugog Hydro submit that the OEB should permit qualifying distributors to recover their full Tier 2 adjustments over no more than two years, once again to ensure that necessary funds are recovered when they are required for the projects being undertaken by the distributor. It makes little sense to arbitrarily postpone the recoveries with no regard for the distributor's need to pay for its Tier 2-related projects, as that will simply result in the imposition of unnecessary carrying costs on the distributor's customers and could delay needed projects.

PROCESS ISSUE – PARTIES RAISING MATTERS NOT SPECIFICALLY ADDRESSED IN THE DRAFT HANDBOOK HAVE NO RIGHT OF REPLY

10. Brantford Power, Aurora Hydro and Scugog Hydro appreciate OEB counsel's suggestion that parties make their entire cases in their arguments in chief. This is entirely appropriate. In the normal course of a proceeding, an applicant would put its entire case forward, an intervenor would respond, and the applicant would file a reply that does not restate its argument, but that instead addresses new matters raised in the response. The 2006 EDR process has denied parties an opportunity to reply to new matters raised in the responding submissions.
11. In the case of Tier 2 adjustments, those parties other than Brantford Power, Aurora Hydro and Scugog Hydro that have commented on this issue have taken positions on the alternatives set out in the draft, which is entirely reasonable. As with other matters addressed in the draft Handbook, (although Brantford Power, Aurora Hydro and Scugog Hydro do not agree with this proposition), it might be said that the responding submissions serve as reply arguments, because participants will have had the opportunity to state their positions on all alternatives in their submissions in chief.

12. Whether other not other participants agree with that proposition, it is not accurate with respect to the Brantford Power/Aurora Hydro/Scugog Hydro submission, because the Brantford Power, Aurora Hydro and Scugog Hydro position is not among the alternatives in the Handbook. The first opportunity that participants will have had to see and comment on the Brantford Power/Aurora Hydro/Scugog Hydro proposal is in reviewing their submission in chief. Accordingly, Brantford Power, Aurora Hydro and Scugog Hydro, notwithstanding that they will have put their entire case forward as directed, will have no chance to reply to any criticisms of their proposal, and they do anticipate criticism. Put simply, this process is denying procedural fairness to Brantford Power, Aurora Hydro and Scugog Hydro.
13. Brantford Power, Aurora Hydro and Scugog Hydro submit that a general right of reply would be appropriate in this proceeding. At the very least, however, Brantford Power, Aurora Hydro and Scugog Hydro expect that they are not alone in raising proposals not already specifically provided for in the draft Handbook. Accordingly, Brantford Power, Aurora Hydro and Scugog Hydro request that the OEB allow participants a right to file replies to those responding submissions that address proposals for new sections or for alternative approaches that are not already enumerated in the draft Handbook. Brantford Power, Aurora Hydro and Scugog Hydro submit that an allowance for reply submissions is fair; allows for not only the promotion of new alternatives but also their defence, and will ultimately contribute to a complete record for the OEB and a more acceptable Handbook.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28th DAY OF FEBRUARY, 2005.

Original signed by James Sidlofsky for
J. Mark Rodger

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